

Serial No. 10/729,502

Art Unit 3637

REMARKS:

Claims 5-6,11,12, 14,18, and 19 have been cancelled. Thus, claims 1-4, 7-10, 13, 15-17, and 20 remain pending.

The Examiner objected to the drawings because claim 13 has been interpreted to include a shelf being supported by three structures (i.e., an existing wall and at least two screening members), whereas the drawings all show a shelf being supported by only two structures. In response, claim 13 has been amended to clearly recite that the removable shelf is horizontally supported through frictional engagement with one of the at least two screening members and an existing wall. Accordingly, the drawings are now believed to be in compliance with 37 CFR 1.83(a) because Fig. 4 depicts a shelf supported through frictional engagement with only one of the two screening members and an existing wall.

Claims 13, 15-17 and 20 were rejected under 35 U.S.C. 112, second paragraph, for failing to indicate whether one or both of the "at least two screening members" are used (along with an existing wall) to support the "at least one shelf" of the invention. In response, claim 13 has been amended to recite a shelf that is "horizontally supported through frictional engagement with one of the at least two screening members and an existing wall." This amendment is supported by Fig. 4 and the description thereof, in that this portion of the specification makes it clear that one of screening members 32a and 34 is supporting the shelf 36 along with existing wall 32b. Consequently, claim 13 and all claims depending therefrom are believed to be in compliance with 35 U.S.C. 112.

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The Examiner also rejected claims 1-4 and 7-10 under 35 U.S.C. 103(a) as being obvious over Ryan (U.S. Patent No. 6,364,263) in view of official notice taken by the Examiner. More specifically, Ryan discloses a screening member and a removable shelf that may be frictionally engaged. However, as noted by the Examiner on page 3 of the Office Action, Ryan fails to teach two key limitations of independent claims 1 and 7: Ryan's screening member and shelf are not configured to enclose an area and Ryan's shelf is not supported by an existing wall via friction. Nonetheless, the Examiner states that an obviousness rejection is supported by official notice that "rooms and areas closed off by partitions are well known in the art."

In response, the applicant respectfully submits that neither of the underlined claim limitations above are fairly disclosed or suggested by Ryan, either alone or in combination with "common knowledge." As stated in the Manual of Patent Examining Procedure, "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." MPEP 2144.03(A). In this case, the applicant can think of no way that the disclosure of Ryan's free standing shelf partition discloses or suggests "enclosing an area" to of one skilled in the art based on "common knowledge" of partitions. Indeed, the applicant can think of a great many examples (hospital divider curtains, booth screens between restaurant tables to name a few) of using partitions to screen an area without enclosing that area, which is one of the novel claim limitations of the current invention. Moreover, the applicant can think of no way that Ryan's free standing shelf partition discloses or suggests supporting a shelf with "an existing wall" when combined with so-called "common knowledge." Again, one of the novel claim limitations of the present invention involves the

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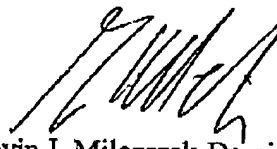
screening of areas by enclosing them with a shelf structure that is supported in part by an existing wall. Other than the teachings of the current specification, the applicant can think of no source of "common knowledge" that would motivate one skilled in the art in particular to enclose an area with a shelf that is supported by an existing wall as claimed. Accordingly, the facts asserted by the Examiner to be common knowledge in the art are not capable of "instant and unquestionable demonstration as being well-known," and the applicant respectfully submits that the cited claims cannot therefore be considered obvious.

Claims 13, 15-17, and 20 were held to be allowable by the Examiner if claim 13 was rewritten to overcome the rejection under 35 U.S.C. 112. Given the amendments and remarks above, the applicant respectfully submits that all pending claims are now rendered allowable.

No fee is believed to have been incurred. Should there be any unforeseen costs, please charge our Deposit Account No. 17-0055.

Respectfully submitted,

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